
(1988) 05 P&H CK 0049

In the Punjab And Haryana At Chandigarh

Case No : Civil Writ Petition No. 3533 of 1988 (O and M)

Surinder Pal

APPELLANT

Vs

State of Punjab and Others

RESPONDENT

Date of Decision : 06-05-1988

Acts Referred:

Essential Commodities Act, 1955 — Section 2, 5

Citation : AIR 1989 P&H 49 : (1988) 2 RCR(Criminal) 333

Hon'ble Judges : M.R. Agnihotri, J; M.M. Punchhi, J

Bench : Division Bench

Advocate : H.L. Sibal and B.M. Lal, for the Appellant; H.S. Riar, D.A.G. Punjab, for the Respondent

Final Decision : Dismissed

Judgement

1. Challenge has been made in this writ petition to the newly enacted and enforced Order called as "The Punjab Regulation of Compounded Feed, Concentrates and Mineral Mixtures Order, 1988" (for short, the order).

2. The petitioner claims that he is a manufacturer of compounded cattle feed, which is a mixture of cattle feed ingredients containing nutrients derived from grains, seeds, by-products of grain, oil cakes and meal, tubers and roots, animal products and other agro-industrial by-products. Clause (3) of the Order prohibits a dealer from manufacturing, selling or/and distributing in any manner compounded cattle feed, concentrates or mineral mixtures unless these are of B.L.S. specifications and unless such a dealer gets himself registered under the Order. The B.L.S. specifications, provides Clause 2(i) of the Order, are those specifications as are laid down by the Bureau of Indian Standards of Government of India. Since the order has the effect of causing disturbance to the present activity of the petitioner towards manufacturing compounded cattle feed etc. he has approached this Court to have the Order declared to have been enacted and enforced without authority of law.

3. Mr. H. L Sibal, learned counsel for the petitioner, submitted that the State Government of Punjab could not enact and enforce the order unless it had been delegated powers u/s 5 of the Essential Commodities Act, 1955. That provision reads as follows:--

"Delegation of Powers:-- The Central Government may, by notified order, direct that the power to make orders or issue notifications u/s 3 shall, in relation to such matters and subject to such conditions, if any, as may be specified in the direction, be exercisable also by :--

(a) such officer or authority subordinate to the Central Government, or

(b) such State Government or such officer or authority subordinate to a State Government, as may be specified in the direction." ,

Mr. Sibal said that the Central Government vide Order No.GSR-800 dated June 9, 1978 (Annexure P-I) had empowered the State Government to make an order in relation to class of commodities known to Section 2(a)(v) relating to food stuffs including edible oil- seeds and oils" and not in relation to classes of essential commodities known to Section" 2(a)(i) "cattle fodder, including oilcakes and other concentrates". And since the matter covered by the impugned Order was in relation to cattle and Cattle fodder, oilcakes and other concentrates, the State Government could not enlarge the scope of "food-stuffs" to envelop in its sweep cattle fodder, oilcakes and concentrates. Specific attention was drawn to the terms of the Order wherein power patently has been drawn from Order No. GSR-800 dated June 9, 1978, which related to "food-stuffs".

4. Notice of motion was issued by us and the State filed a short reply on the affidavit of the Milk Commissioner, Punjab. The attack to the order was otherwise met by the learned Sr. Deputy Advocate-General, Punjab. Having heard the learned counsel for the parties, we thought it expedient to dispose of this petition at the motion stage itself.

5. Section 2(a) of the Essential Commodities Act provides:

"(a) "essential commodity" means any of the following classes of commodities -

(i) cattle fodder, including oilcakes and other concentrates;

(ii) to (iv).....

(v) food-stuffs, including edible oil-seeds and oils";

The argument of Mr. Sibal was that items (i) and (v) carried different connotations and, therefore, despite overlapping the one which was more specific should hold the field. Reliance was placed by him on The J.K. Cotton Spinning and Weaving Mills Co. Ltd. Vs. The State of Uttar Pradesh and Others, , to contend that when there was conflict between a specific provision and a general provision, the specific provision shall prevail over the general provision and that the general provision applies to only such cases which are not covered by the

special provision. The rule undoubtedly is unexceptionable, but the way the expression "essential commodity" has been defined, it appears to us patent that one item may overlap another and may even be inclusive of another. Significantly, the expression "food-stuffs" which in common parlance means a substance used as food, is not confined to human-beings alone excluding its use for animals. Rather the word "food" is a very general term and applies to all what is eaten for the nourishment of the body not only of humans but also for animals. We are not inclined to interpret the expression "food-stuffs" in a restricted way, so as to keep within its purview "stuff" meant for human-beings excluding from its purview "stuff" meant for animals.

6. The matter is not *res integra*. A Division Bench of this Court in *Sat Pal Gupta v. State of Haryana* (1972) 74 PLR 30, when examining a similar attack in relation to rice bran in the context of the Punjab Rice Dealers Licensing Order, 1964, subject of attack on the ground that the normal use of rice bran was to feed, poultry and sometimes cattle, observed as follows : --

"animals also have life and whatever they eat is food, though in a very narrow sense it is said "food for animals" whereas similarly whatever human beings eat is said "food for human beings" but that does not mean that the expression "food-stuff" merely means that which is only consumed by human beings. In this view of the matter, we are constrained to hold that the learned counsel is not right in his contention that the expression "foodstuff" as used in the order dated 24th July, 1967, is merely restricted to human beings. We, therefore, repel the first contention."

Being in complete agreement with the view expressed by the Division Bench, we hold that the State of Punjab had been properly empowered under Government Order No. GSR-800 dated June 9, 1978 (Annexure P-1) to enact and enforce an order in relation to foodstuffs consumed by animals and the opening paragraph of the said order rightly points out the necessity for regulating the quality of compounded cattle-feed concentrates and mineral mixtures.

7. The second ground raised was that ingredients which go to make cattle feed are not available of the specifications laid down by the Bureau of Indian Standards of Government of India. Reliance was placed on Annexure P-3 a certificate issued by the Professor of Animal Nutrition, Department of Animal Sciences, Punjab Agriculture University, Ludhiana, an ex-Member of I.S.I. Feed Committee. All what is said in the certificate is that feed ingredients available in the market have very wide variation. Fear has been expressed that the specifications asked for in the impugned order would be very difficult to meet and that steps should be taken to ensure the availability of feed ingredients of the requisite standards.

8. Mr. Riar, learned Sr. D. A. G. Punjab, states that the State would ensure their availability and if the ingredients of the said specification are not available in Punjab and there is difficulty in getting them from other States within India, the

State would ensure that they are available to the feed manufacturers, for it has a duty towards preserving the cattle wealth of India and indirectly towards economic growth on that aspect. We are satisfied by the assurance given by the learned Sr. D.A.G. Punjab. So, this ground also fails.

9. As a result, we dismiss the petition at the motion stage in limine.